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The policy with respect to the German sequestered property is to be determined by Congress. The Knox Resolution makes its eventual return to its owners conditional upon the satisfaction by Germany of the claims of American citizens, but does not assure its return. Commercial policy dictated the decadence of the old practice of confiscation.²⁰ The like consideration is operative to-day, with greater force than ever. Any confiscation of the property, in whole or in part, would retard the development of the world's resources by imperilling foreign investment, would promote armament by making the safety not merely of public but of private property depend upon success in arms, and would loosen one of the most fundamental of the props of the existing economic and social structure, by undermining the security of private property. A reversion to the obsolete practice of confiscation is fraught with immeasurable danger to the supremacy of law.

E. M. B.

ACCELERATION OF REMAINDERS

The theory of acceleration proceeds upon the supposition that, although the ulterior devise or grant is in terms not to take effect in possession until the decease of the prior life tenant, yet, in point of fact, it is to be read as a limitation of a remainder to take effect in every event which removes the prior estate.¹ At common law a strict legal remainder had to be supported by a valid particular freehold estate and had to be so limited as to take effect *eo instante* on the termination of the estate.² The feudal system required some responsible person to be available at all times to perform the feudal services which became an inseparable adjunct to the seisin. Thus it followed necessarily that the seisin had to be in some definite person. Consequently in a feoffment to A for life remainder to B, if A was a monk incapable of taking, B's remainder was bad,³ as the law would not permit the seisin to be in abeyance until A's death. But if a home for the seisin was provided and it once passed from the grantor, as in a case where the first limitation is valid, an ulterior limitation following an intervening void estate was saved by accelerating it upon the destruction of the

²⁰ The original relaxation of the practice of confiscation was probably due to the general conviction, of mutual advantage, that those surviving the devastating effects of unmitigated war should have something with which to take up again the thread of life.

¹ 1 Jarman, *Wills* (6th ed. 1910) 719. For an excellent discussion of acceleration of remainders and a collection of common-law authority, see Farrar, *Acceleration of Remainders* (1916) 32 L. QUAR. REV. 392; Sweet, *Acceleration of Future Interests* (1917) 61 SOL. JOUR. 573, 588.

² 1 Tiffany, *Real Property* (2d ed. 1920) secs. 135, 136; Gray, *Perpetuities* (3d ed. 1915) sec. 8; Perkins, *Conveyancing* (15th ed. 1792) sec. 568; 18 Vin. Abr. tit. Remainder, c. 1, 4, 5, 6, 7.

³ Preston, *Estates* (2d ed. 1828) sec. 119; Perkins, *loc. cit.*; Tiffany, *loc. cit.*; Gray, *loc. cit.*

particular intermediate estate.⁴ For example in a feoffment to A for life, remainder to B for life, remainder to C in fee, where B's estate is avoided, C's estate is accelerated on the termination of A's. However, if there was a person on hand to perform the feudal services, as in the case of the determination of the particular estate by a re-entry upon a condition affecting only the particular estate, the remainder could depend upon the estate *pur autre vie* and was not accelerated.⁵ The effect of a disclaimer by the tenant of the particular estate is in dispute, but it appears not to have made such estate void *ab initio*, (providing the estate had once vested in the disclaimer) so as to defeat a remainder, although it caused no acceleration of it.⁶

The underlying purpose of the Statute of Wills, as well as of local customs prior to it, was to enable the owner of land to give his property to whom he desired, and so naturally the courts endeavored to give effect to the intention of the testator. Therefore limitations in wills were more liberally treated, and a remainder was accelerated where the particular estate was void in its inception,⁷ or disclaimed,⁸ or where a void intervening particular estate followed a valid prior estate which failed.⁹

⁴ Perkins, *op. cit.*, secs. 566; 1 Sheppard, *Touchstone* (1st Amer. ed. 1808) sec. 435; *Maud's Case* (1333) Y. B. 7 Edw. III, p. 19, pl. 24; *Carrick v. Errington* (1726, Ch.) 2 P. Wms. 361. The limitations in the latter case were to A for life, remainder to B, a papist, remainder to trustees for the life of B in trust to let B take the profits, and to preserve the contingent remainders, remainder to B's sons in tail male, remainder to C. A died and B could not take because of the statute against the papists. The court held that the trustee's estate was accelerated but not that of C, and that the rents and profits should go to the grantor's heirs during B's life or until he should have a protestant son. See note 25 *infra*.

⁵ Perkins, *op. cit.*, sec. 565; 2 Co. Lit. 298a.

⁶ Co. Lit. 298a. An estate could be forced surreptitiously upon a person, and even though later disclaimed, it was sufficient to support a remainder. See 2 Coke, *Institutes*, 286; Statham Abr. (Klingersmith's ed. 1915) tit. Disclaymer (10); Perkins, *op. cit.*, secs. 44, 45. The question rarely arose at common law as to the effect of a disclaimer, as the feoffee had to be present, and if at the moment of enfeoffing he refused to take, no estate passed. On this ground, that the disclaimer never had even an estate surreptitiously forced upon him, most of the authority to the contrary can be distinguished. As to duties or liabilities in the disclaimer, the disclaimer cleared him *ab initio*. See 61 SOL. JOUR. 573; Sheppard, *op. cit.*, 285; *Re Wimperis* [1914] 1 Ch. 502. For both views see 61 SOL. JOUR. 573, 588, 608, 627, 642; 33 L. QUAR. REV. 132, 254.

⁷ Tiffany, *op. cit.*, sec. 146; Jarman, *op. cit.*, 718-719; Perkins, *op. cit.*, sec. 567; Co. Lit. 298a. For example, in a devise to A, a monk, for life, remainder to B in fee, the remainder was good although A's estate was void.

⁸ Perkins, *op. cit.*, sec. 569; *Archbishop Cranmer's case*, (1572, K. B.) 3 Dyer, 309a; *Jull v. Jacob* (1876) L. R. 3 Ch. Div. 703; see American cases, note 13 *infra*. E. g., a devise to A for life, remainder to B in fee; A disclaims; B's remainder is accelerated.

⁹ Perkins, *op. cit.*, sec. 566; see note 4 *supra*. E. g., a devise or grant to A for life, remainder to B, a monk, for life, remainder to C; A dies; C's estate is accelerated.

The doctrine of seisin did not have the same effect in cases involving equitable estates. The legal estate was vested in the feoffee to uses; so the feudal desideratum, a person to perform the required services, was not wanting.¹⁰ There was no crying need of acceleration to save the equitable remainder. As a result there grew up the doctrine that where the limitation was by deed or will to trustees and the limitation of a prior equitable particular estate was void, subsequent equitable or legal remainders were not accelerated unless such acceleration was necessary to carry out the clearly expressed intention of the grantor or testator.¹¹ Instead there was a resulting use to the grantor's or the testator's heirs.¹²

The American cases seem to deal chiefly with devises. A vested legal or equitable remainder is accelerated, following the common-law rules, on the destruction of the prior particular estate, either by disclaiming,¹³ or by the death of the life tenant in the testator's lifetime.¹⁴ The widow sometimes throws into confusion the testator's plan of disposition by renouncing a life interest given under the will and electing to take her statutory dower rights. When the amount

¹⁰ See, Farrar, *op. cit.*, 32 L. QUAR. REV. 400.

¹¹ *Carrick v. Errington*, *supra* note 4; *Lainson v. Lainson* (1853, Ch.) 18 Beav. 1; *Sidney v. Shelley* (1815, Ch.) 19 Ves. 352; Fearn, *Contingent Remainders* (1st Amer. ed. 1819) 221, Butler's note; see Jarman, *op. cit.*, 719.

¹² Lewin, *Trusts* (12th ed. 1911) 178; Jarman, *op. cit.*, 704; Tiffany, *op. cit.*, sec. 101; *Sidney v. Shelley*, *supra*. This case was a devise to trustees to uses for 99 years, with limitations over. No uses were later mentioned in the will and so the question arose over the disposition of the term. The Lord Chancellor said: "I agree, a voluntary settlement must be taken as I find it. If it is by deed, I must give it its legal effect; and cannot consider the intention in the same ways as I could upon a will; but upon a marriage settlement this court is to look at the contract, and upon the intention of the parties, and give the beneficial interest so that the intention may be satisfied." The decision was against the heir because of the expressed intention of the testator.

A deed operating under the Statute of Uses would not give rise to a resulting use if there was consideration. See Lewin, *op. cit.*, 164 (4). There probably would be an acceleration of the remainder. See Co. Lit. 298a, 272a. In the United States the doctrine of resulting uses never gained much strength even in voluntary conveyances. See Tiffany, *op. cit.*, sec. 107 (b).

¹³ *Hesseltine v. Partridge* (1920) 236 Mass. 77, 127 N. E. 429, is a typical example. The devise was of realty to A for life, remainder to B and C. A renounced and took her dower interest. B's and C's estates were accelerated. *Slocum v. Hagerman* (1898) 176 Ill. 533, 52 N. E. 332; *Parker v. Ross* (1898) 69 N. H. 213, 45 Atl. 576; *Adams v. Gillespie* (1855) 55 N. C. 244 (gift of personalty); *Dean v. Hart* (1878) 62 Ala. 308; *In Re Rawlings* (1891) 81 Iowa, 701, 47 N. W. 992. See also Jarman, *op. cit.*, 719, 720; Tiffany, *op. cit.*, sec. 146, accord.

¹⁴ *Morris v. Philips* (1919) 287 Ill. 633, 122 N. E. 831. Here the devise was to A's children subject to a life estate in A. A died before the testator, and it was held that the children's remainder was accelerated.

Thornton v. Thompson (1908) 197 Mass. 273, 83 N. E. 880; *Lyford v. McPettridge* (1917) 228 Mass. 285, 117 N. E. 589 (both the testator and life tenant were killed at the same time in an accident) accord.

so taken exceeds the value of the life interest given under the will so as to diminish the gifts limited to others after the termination of the widow's life interest, specific legacies are not accelerated at the expense of a residuary legatee, but the balance of the estate remaining, after the widow's statutory share is paid, is allowed to accumulate until her death.¹⁵ In a few jurisdictions the effect on the residuary legatee of the widow's election is not taken into consideration and renunciation is held to be the equivalent of death.¹⁶ When all the legatees are affected equally, the reason for not accelerating the subsequently limited gifts fails, and acceleration takes place.¹⁷ Similarly, vested legacies following a void trust are advanced.¹⁸

A contingent remainder by its very nature can never be accelerated. Bearing in mind the fundamental rule that the intention of the testator governs, when the persons who are to take cannot be identified from the description in the will until the happening of some future event, it follows that there cannot be acceleration without violating the testator's expressed intention.¹⁹

¹⁵ *Sellick v. Sellick* (1919) 207 Mich. 194, 173 N. W. 609; *Hinkley v. House of Refuge* (1874) 40 Md. 461; *Firth v. Denny* (1861, Mass.) 2 Allen, 468; *Holdren v. Holdren* (1908) 78 Ohio St. 276, 85 N. E. 537; *Dale v. Bartley* (1877) 58 Ind. 101; *Jones v. Knappen* (1891) 63 Vt. 391, 22 Atl. 630; *Cotten v. Fletcher* (1914) 77 N. H. 216, 90 Atl. 510; see 1 Woerner, *Administration* (2d ed. 1899) sec. 119.

¹⁶ *Coover's Appeal* (1873) 74 Pa. 143; *In Re Schultz* (1897) 113 Mich. 592, 71 N. W. 1079 (overruled by *Sellick v. Sellick*, *supra*, as regards the point in discussion); *In Re Ferguson's Appeal* (1890) 138 Pa. 208, 20 Atl. 945; *Trustees of Church Home v. Morris* (1896) 99 Ky. 317, 36 S. W. 2 (this case was decided on the ground that the primary objects of the testator's bounty were the specific legatees, and so acceleration was granted despite the injury to the residuary legatee). See Woerner, *loc. cit.*

¹⁷ *Randall v. Randall* (1897) 85 Md. 430, 37 Atl. 209; *Parker v. Ross* (1897) 69 N. H. 213, 45 Atl. 576; *Fox v. Rumery* (1878) 68 Me. 121; *Robinson v. Harrison* (1874) 2 Tenn. Ch. 11.

¹⁸ In a devise to trustees for five years, and then over to charitable institutions, where the trust was void under the New York statute, it was held that the remainder could be accelerated, as it was vested. *In re Hitchcock* (1917) 222 N. Y. 57, 118 N. E. 220. But those gifts which are to be paid out of the trust are void, though the gift over of the corpus of the estate is accelerated. *In re McQueens* (1917, Surro.) 99 Misc. 185, 163 N. Y. Supp. 287; *Maynard v. Maynard* (1919, Sup. Ct.) 108 Misc. 362, 178 N. Y. Supp. 329. See 1 Jarman, *op. cit.*, 723.

If the remainders are contingent after a void trust, they cannot be accelerated and fall with the trust. *In re Silsby* (1920) 229 N. Y. 396, 128 N. E. 212. Cf. *Thistle's Estate* (1919) 263 Pa. 60, 106 Atl. 94 (contingent remainders dependent upon a void accumulation clause).

¹⁹ In a recent Kentucky case the limitations of a devise were to trustees to pay the income to the testator's wife for life, and after her death to B and C equally and the whole income to the survivor, then to convert the whole estate into cash and divide it among the *then* living descendants of C *per stirpes*. The wife and B died. C was about seventy years old and wished to release to

There remains to be considered the question of accelerating a vested remainder preceded by an intervening contingent remainder.²⁰ At common law upon the failure of the particular estate the contingent remainder was destroyed unless saved by a trust,²¹ but modern statutes generally render it indestructible.²² The question now arises, under the statute, as to who is entitled to the rents and profits during the interim, as between the heir of the testator or the grantor and the holder of the next vested estate. In the case of equitable limitations there is little difficulty in applying the common-law rules,²³ and, where it clearly appears to be the intention of the testator or grantor to disinherit his heirs, the remainder is accelerated, subject to a shifting use if the contingent remainder should vest. This view has been adopted by two recent English cases.²⁴ The doctrine of seisin interferes in the case of legal remainders. For the seisin, once vested in the remainderman, cannot be taken back, or in other words, there can be no shifting legal estate at common law.²⁵ A relic of feudalism,

his children. One child refused to join. It was held that the remainders were contingent, as the persons described could not be identified until C died, and there could be no acceleration. *Keeton v. Tipton* (1919) 184 Ky. 704, 212 S. W. 909. See also *Page v. Rouss* (1920, W. Va.) 103 S. E. 289; *Compton v. Rixey*s (1919) 124 Va. 548, 98 S. E. 651; *Blatchford v. Newberry* (1880) 99 Ill. 11 (good collection of early authority); *Toombs v. Spratlin* (1907) 127 Ga. 766, 57 S. E. 59; *Swann v. Austell* (1918, C. C. A. 5th) 261 Fed. 465; *Miller v. Miller* (1913) 91 Kan., 136 Pac. 953 (conveyance by deed).

In *O'Rear v. Bogie* (1914) 157 Ky. 666, 163 S. W. 1107, which seems to hold that a contingent remainder may be accelerated, it is to be noted that the contingent remainderman and the heir on whom the estate would have fallen in the event of the court declaring an intestacy were the same person.

²⁰ Limitations to trustees in fee upon trust for A for life, remainder to A's first and other sons in tail, remainder to B and C successively for life, remainder over. A disclaimed. The contingent remainders to A's sons were preserved by statute. The question is who is entitled to the rents and profits until the vesting of the contingent remainder. *In re Willis* [1917] 1 Ch. 365. See *Jarman, op. cit.*, 719, 953; *Co. Lit.* 55 b, n. 8.

²¹ See *Gray, op. cit.*, sec. 10, *Tiffany, op. cit.*, sec. 140.

²² See *Tiffany, op. cit.*, secs. 177, 178.

²³ See notes 11 and 12 *supra*.

²⁴ *In Re Conyngham* [1920] 2 Ch. 495 (where the gift was revoked by a codicil in the will); *In re Willis, supra* note 20.

This is really treating the contingent remainder preserved by statute as an executory limitation and applying the common-law rules. See *Saunders, Uses and Trusts* (2d Amer. ed. 1850) 358. It is again a question of the intention of the testator. Cf. *In Re Townsend's Estate* (1886) L. R. 34 Ch. Div. 357.

²⁵ *In Re Scott* [1911] 2 Ch. 374. A devise to the use of A for life, remainder to his first and other sons in tail, remainder to B, remainder over. A disclaimed. The contingent remainders were saved by statute. It was held that B's interest was not accelerated. The decision was based on *Carrick v. Errington, supra* note 4. In that case, however, if the trustees' estate had passed to the remainderman, the contingent remainders would have failed and the very object of the trust would have been defeated. The difficulty in applying the same rules to legal

this need of a definite person to respond to the call for feudal services, is the reason for this distinction, though why the remainderman will not serve this present fictitious purpose as well as the heir is not quite clear. Clearly a contingent remainder, preserved after the particular estate is destroyed, has much the same character as an executory limitation. The common-law theory of seisin has already been modified to a great extent to meet the exigencies of modern conditions.²⁶ It would not be doing any great violence to this moribund doctrine to permit such legal remainders to be accelerated subject to the executory contingent remainder, provided it was the intention of the testator to disinherit his heir.

ADMISSIBILITY OF INCOME TAX RETURN TO PROVE EARNING CAPACITY

The recent case of *Veatch's Adm'r v. Louisville Ry.* (1921, Ky.) 228 S. W. 35, raises the interesting question whether an income tax return is admissible in evidence to prove the earning capacity of a decedent. In this case the administrator sued for the wrongful death of his intestate, and, to prove her earning capacity, offered a certified income tax return made shortly prior to her death. The court excluded the evidence on the ground that it was a self-serving declaration. The court argued that, since the tendency is to make the tax as small as possible, the return is a declaration in the interest of the declarant. Regarded in this aspect, an absolutely bona fide statement, although neutral, is also inadmissible, since only declarations *against* interest are recognized as exceptions to the hearsay rule.¹ But when A makes an income tax return, he at once subjects himself to a pecuniary liability to the government proportional to his admitted income. In this aspect the return is against interest.² Where a declaration has two aspects, it is competent in so far as it tends to prove the matter against interest.³

The recognized exceptions to the hearsay rule are based upon necessity and trustworthiness.⁴ In the instant case the necessity exists,

limitations as govern equitable limitations, is the conception of seisin which prevented an executory use at common law. The freehold had to pass out of the grantor. If it passed to a vested remainder limited after a contingent remainder, then the contingent remainder was extinguished. *Fearne, op. cit.*, 281.

²⁶ *Finch, Seisin* (1919) 4 CORN. L. QUAR. I.

¹ *Page v. Cave* (1920, Vt.) 111 Atl. 398; *Chiles v. Bowyer* (1920, Va.) 103 S. E. 619.

² *Wigmore, Evidence* (1904) secs. 1461, 1463; *Humes v. O'Bryan & Washington* (1883) 74 Ala. 79. For the purposes for which the income tax return is made, it is against the declarant's interest to admit that he has any income beyond the amount that is exempt from the tax. A return showing no income subject to tax would not be against interest.

³ *Wigmore, op. cit.*, sec. 1458.

⁴ *Wigmore, op. cit.*, secs. 1421, 1422.